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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BODEGA LATINA CORPORATION D/B/A EL SUPER, Respondent, and UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 324 Charging Party.	Case No. 21-CA-183276 **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 324'S REPLY TO BODEGA LATINA CORPORATION D/B/A EL SUPER'S ANSWERING BRIEF TO THE CHARGING PARTY'S CROSS-EXCEPTIONS**

Bodega Latina Corporation d/b/a El Super ("El Super") objects to only one of UFCW Local 324's ("Union") two cross-exceptions to the December 29, 2017 decision of the Administrative Law Judge ("ALJ"). El Super's Answering Brief to the Union's Cross-Exceptions at 1 [referred to hereinafter as "Answering Brief"]. El Super *does not* object to the Union's exception to the ALJ's finding that "Respondent and the Union Locals implemented a ratified collective-bargaining agreement (CBA) with Respondent's last and final offer dated April 7, 2014." ALJ Dec. at 4; Answering Brief at 1. Rather, El Super acknowledges that it unilaterally implemented its purported last, best and final offer on April 7, 2014. *See* GCX 2; Tr. 26:16-19, 34:18-22; 37:10-13, 57:1-7, 66:1-3, 67:13-17, 161:9-12; Answering Brief at 1. While El Super felt compelled to note this as "yet another example of the ALJ's numerous factual inaccuracies," it also agrees that it "'is ultimately immaterial' to the ALJ's conclusion in this case." Answering Brief at 1. As with El Super's other disagreements with the ALJ's findings, this "immaterial" mistake does not provide a basis for the Board to disturb the ALJ's ultimate ruling in this case, which is clearly supported by substantial evidence.

El Super *does* dispute the Union's second exception. *Id.* There, the Union excepts to the ALJ's failure to award interest accrued between when Mireya Beltran-Pineda should have received payment pursuant to her March 22, 2016 request for paid time-off, and June 24, 2016, when Ms. Beltran was paid-out for these accrued vacation hours pursuant to the settlement in Case 21-CA-138274. *Id.*; ALJ Dec. 32-33. El Super claims that an award of interest is inappropriate because backpay was neither sought by the General Counsel nor awarded by the ALJ. Answering Brief at 1. First, a Charging Party can request remedies that were not requested by the General Counsel. *See* NLRB Casehandling Manual, Part 1, Section 10380.3 ("[t]he charging party, on its own behalf upon entering an appearance, is entitled to examine witnesses

and introduce additional evidence, as well as argue for additional remedies"); *Durham Sch. Servs.*, 360 NLRB 694 (2014) (Board ordered remedy only sought by Charging Party and not General Counsel); *Purple Commc'ns, Inc.*, 361 NLRB No. 43, fn. 2 (Sept. 24, 2014) (same). Second, whether backpay was due at the time of the ALJ's decision is not dispositive of whether interest is owed on money that was withheld from an employee as a result of her employer's unlawful conduct.

The Board has long held that "interest is not a penalty, but is a method of reimbursing victims for the time value of the money that they lost and that the employer had." *Yorkaire, Inc. & Sheet Metal Workers Local Union No. 19*, 328 NLRB 286, 287–88 (1999). Here, the ALJ unequivocally found that El Super should have paid Ms. Beltran her available vacation when she requested paid time-off on March 22, 2016. ALJ Dec. 32-33. While El Super is correct that the General Counsel did not seek monetary damages in this case, this was only because El Super happened to pay Ms. Beltran out, on June 24, 2016, for the vacation time she had requested to use during her medical leave on March 22, 2016, pursuant to an unrelated settlement. *See* JX1 at paragraph 12. It is therefore clear that El Super had possession of $298.47 until June 24, 2016 that, per the ALJ's ruling, should have been in Ms. Beltran's possession as of March 22, 2016. The $298.47 that El Super unlawfully withheld from Ms. Beltran remained in El Super's account "earning a return" through this three-month period, and "enabled the [employer] to avoid the interest they would have had to pay to borrow the same amount." *Mid-State Ready Mix*, 316 NLRB 500, 1–501 (1995). "Meanwhile the wronged employee[Ms. Beltran] lacked funds that [she] could have invested (or that would have enabled [her] to avoid the expense of borrowing)." *Id.* Under such circumstances, it is clear that "[t[he return on the money belongs to the victim, not the wrongdoer, and interest is the means by which this transfer is accomplished." *Id.* In other

words, Ms. Beltran, and not El Super, is clearly entitled to the "time value" of the $298.47 that El Super unlawfully denied her for roughly three months. *Yorkaire, Inc.*, 328 NLRB at 288. The Board should therefore award three month's interest on the $298.47 in order to "transfer" the "return on the money" back to Ms. Beltran and restore the situation to status quo ante. *Id.*; *Mid-State Ready Mix*, 316 NLRB at 501.

For all of the foregoing reasons, the Board should accept the Union's exceptions, and modify the ALJ's December 29, 2017 Decision and Award accordingly.

DATED: April 17, 2018

Respectfully submitted,
GILBERT & SACKMAN
A LAW CORPORATION

By_____
Travis. S. West

Attorneys for United Food and Commercial Workers Union, Local 324

DECLARATION OF SERVICE

On April 17, 2018, I hereby certify that I electronically filed the foregoing:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 324'2 REPLY TO BODEGA LATINA CORPORATION D/B/A EL SUPER'S ANSWERING BRIEF TO THE CHARGING PARTY'S CROSS-EXCEPTIONS

with the National Labor Relations Board using the NLRB's e-filing system addressed to the Board's Office of Executive Secretary.

I also served the above document by electronic mail to:

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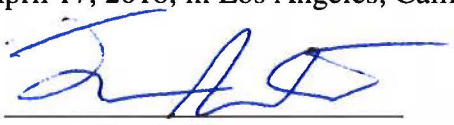
I declare under penalty of perjury under the laws of California that the foregoing is true and correct and was executed by me on April 17, 2018, in Los Angeles, California.



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